

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
BellSouth Telecommunications, Inc.)	
)	WC Docket No. 03-251
Request for Declaratory Ruling that)	
State Commissions May Not Regulate)	
Broadband Internet Access Service by)	
Requiring BellSouth to Provide Wholesale)	
or Retail Broadband Services to CLEC)	
UNE Voice Customers)	

COMMENTS OF THE GEORGIA PUBLIC SERVICE COMMISSION

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Pursuant to the *Public Notice* released by the Federal Communications Commission (“FCC”) on December 16, 2003, and December 30, 2003, Order that granted an extension for the filing of comments, the Georgia Public Service Commission (“GPSC”) respectfully submits its comments in opposition to the Emergency Request for Declaratory Ruling (“Request”) filed by BellSouth Telecommunications, Inc. (“BellSouth”) on December 9, 2003. While numerous issues were raised in BellSouth’s Request, given the broad interest in this subject matter and for the purpose of reducing duplicative arguments, GPSC will focus its comments on rebutting BellSouth’s argument that state commissions unlawfully regulate federal tariffs by prohibiting an incumbent local exchange carrier

(“ILEC”) from denying its digital line subscriber (“DSL”) service to voice customers of competitive local exchange carriers (“CLECs”).

I. GPSC Order

MCIAccess Transmission Services and MCI WorldCom Communications, Inc. (collectively “MCI”) filed a complaint with GPSC against BellSouth because of its refusal to provide its DSL service to MCI voice customers. GPSC concluded that BellSouth’s policy violated state law and the parties’ interconnection agreements. (GPSC Docket No. 11901-U, *Order on Complaint*, p. 20). GPSC did not order BellSouth to cease providing its DSL service, to provide its service without adequate compensation or even what rate to charge customers for its service. GPSC’s order was narrowly-tailored for the purpose of protecting the integrity of local competition in Georgia. This action was within its authority, and BellSouth’s Request is misguided.

II. A state commission order prohibiting an ILEC from refusing to provide its DSL service to CLEC voice customers does not unlawfully regulate a federal DSL tariff, but rather, it is a lawful exercise of jurisdiction by a state commission over local competition.

GPSC is statutorily charged with protecting consumers of telecommunications services during the transition to a competitive telecommunications market. O.C.G.A. § 46-5-161(a)(2). In meeting this

obligation, GPSC takes the necessary and proper actions to ensure fair and lawful competition in the local telecommunications market. GPSC determined BellSouth's policy impairs local voice competition, and in fact, is not fair and lawful. Under BellSouth's position, GPSC cannot act regardless of whether its conclusion on the impairment to local competition is correct because BellSouth has decided to tie its voice service to a federally regulated service. In short, BellSouth's position is that because it decided to package its voice and DSL services, it is able to divest state commissions of their authority over local voice service.

The conclusion that state commissions can no longer fulfill their purpose of protecting consumers and promoting local competition in the telecommunications industry because BellSouth has decided upon a new marketing strategy is not only backwards but dangerous. A situation in which a voice customer receives a benefit for receiving service with one provider, or conversely, is punished for receiving voice service from another, has a foreseeable impact on that customer's choice of provider. The proceeding before GPSC included substantial evidence on the impact of BellSouth's policy on local voice competition in Georgia. BellSouth and MCI submitted evidence on the alternatives and conversely, the lack thereof, to BellSouth's DSL service. However, even if BellSouth were to concede that a local voice customer has no comparable internet access alternative to its DSL service,

the logic of its pre-emption argument would not change. No matter how significant or definite the impact of BellSouth's policy on local competition, under the argument BellSouth advances, state commissions would lack the authority to even address it. State commissions should not be deemed powerless to protect consumers from policies that impair local competition simply because a company under its jurisdiction promotes an unfair policy and decides to tie a federally regulated tariff to local service.

BellSouth's position is contrary to relevant judicial precedent. It has been recognized that the Federal Telecommunications Act of 1996 ("1996 Act") incorporates the concept of "cooperative federalism" in which "federal and state agencies should endeavor to harmonize their efforts with one another, while federal courts oversee this partnership by insisting on articulations of regulatory policy that respect the values embodied in the underlying legislation." *Mich. Bell Tel. Co. v. MCIMetro Access Transmission Servs.*, 323 F.3d 348, 353 (6th Cir. 2003) (citing to *Federal Common Law, Cooperative Federalism and the Enforcement of the Telecom Act*, 76 N.Y.U.L. Rev. 1692, 1732 (2001)). This is precisely what GPSC accomplished in narrowly-tailoring its decision. While its actions are directed by federal law, state commissions have the freedom to reach decisions based on the needs of the local market. *Mich. Bell Tel. Co.*, 323 F.3d at 352. In rejecting BellSouth's pre-emption argument related DSL, a Kentucky

III. Conclusion

Respectfully submitted,

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